

PROCEEDINGS OF THE BROWN COUNTY
PUBLIC SAFETY COMMITTEE

Pursuant to Section 19.84 Wis. Stats., a regular meeting of the Brown County Public Safety Committee was held on Wednesday, February 6, 2019 in Room 200 of the Northern Building, 305 E. Walnut Street, Green Bay, Wisconsin.

Present: Chair Buckley, Supervisor Schadewald, Supervisor Nicholson, Supervisor Borchardt, Supervisor Gruszynski
Also Present: Supervisors Deneys, Deslauriers and Lefebvre, Public Works Director Paul Fontecchio, Director of Technology Services August Neverman, Enterprise Technology Project Manager Beth Rodgers, TAD/CJCC Court Supervisor Mark Vanden Hoogen, Judge Zuidmulder, Judge Atkinson, Director of Administration Chad Weininger, Corporation Counsel David Hemery, Clerk of Courts John Vander Leest, Public Safety Communications Director Cullen Peltier, Emergency Management Director Jerad Preston, Sheriff Todd Delain, Captain John Rousseau, Office Manager Michele Andresen, other interested parties and media.

I. Call meeting to order.

The meeting was called to order by Chair Pat Buckley at 4:00 pm.

II. Approve/Modify Agenda.

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to take Items 23, 24 and 25 following Item 2. Vote taken. **MOTION CARRIED UNANIMOUSLY**

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to approve as amended. Vote taken. **MOTION CARRIED UNANIMOUSLY**

III. Approve/Modify Minutes of January 2, 2019.

Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to approve. Vote taken. **MOTION CARRIED UNANIMOUSLY**

Comments from the Public. None.

1. Review Minutes of:

- a. Criminal Justice Coordinating Board (January 15, 2019).**

Motion made by Supervisor Gruszynski, seconded by Supervisor Nicholson to receive and place on file. Vote taken. **MOTION CARRIED UNANIMOUSLY**

- b. Local Emergency Planning Committee (January 8, 2019).**

Motion made by Supervisor Nicholson, seconded by Supervisor Borchardt to receive and place on file. Vote taken. **MOTION CARRIED UNANIMOUSLY**

- c. Traffic Safety Commission (October 9, 2018).**

Motion made by Supervisor Borchardt, seconded by Supervisor Nicholson to receive and place on file. Vote taken. **MOTION CARRIED UNANIMOUSLY**

Treatment Courts

2. Treatment Court Update by Judge Zuidmulder.

Judge Zuidmulder provided a handout, a copy of which is attached, showing the current status of each of the treatment courts. The treatment courts were established in 2009 and Judge Zuidmulder has been providing updates on a regular basis to the Public Safety and Human Services Committees since then. He commended the

County Board for the initial funding of the treatment courts as well as their support in increasing the treatment courts and continuing to fund them. The treatment courts benefit those who need a highly structured probation setting which includes treatment to address the underlying cause of criminal activity.

Judge Zuidmulder shared that he has been asked to serve on one of the Governor's transition committees and he was told that he was asked because Brown County is considered to be the crown jewel of treatment courts and what has been accomplished here is recognized and acknowledged statewide.

Judge Zuidmulder continued that he has the pleasure of being the Judge of the NEW Veterans Treatment Court. This court is made up of individuals who are suffering from PTSD which has been inflicted upon the participants through their service to our country. These individuals are in programs and working very closely with the VA to get the help they need. He noted that at one time soldiers were being rotated into wars every 60 days, but the DOD had indicated it should have been more like every 18 months. As a result of this, we have a lot of service members coming back into the community that need help. Judge Zuidmulder is proud to be involved in the Veterans Treatment Court and has found it very inspirational to assist the participants in finding their path back.

Judge Zuidmulder also presides over the Mental Health Treatment Court which is made up of individuals who have consumed an inordinate amount of law enforcement time in the past. Through this treatment court, these people are able to be stabilized and regulated and are able to function in the community. One of the most dramatic things with the Mental Health Treatment Court is shown on the last page of the handout which shows the decrease in the number of police calls and jail placements prior to Mental Health Treatment Court and then post Mental Health Treatment Court. There was an 89% decrease in police calls/contact during and after completion of Mental Health Treatment Court as well as a decrease of 88% of jail placements during and after Mental Health Treatment Court.

At the time Veterans Court was started, it did not have a case manager. Judge Zuidmulder used one of the case managers from the OWI Treatment Court to cover the Veterans Treatment Court and that has been working out so far, but he wanted the Committee to know that in the event the number of participants in the treatment courts increases, he may have to ask for another case manager.

Supervisor Borchardt commented that she appreciates what the treatment courts do and said there is a lot to be proud of. She enjoys going to the graduations and seeing the successes of the participants.

Motion made by Supervisor Nicholson, seconded by Supervisor Schadewald to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Although shown in the proper format here, Items 23, 24 and 25 were taken at this time.

Circuit Courts, Commissioners, Probate

- 3. Discussion re: Explanation regarding assignment of court appointed attorneys when representation should be by Public Defender's Office.**

Chair Buckley said this was brought to his attention because there were concerns regarding judges appointing attorneys instead of waiting for the Public Defender's Office and Judge Atkinson indicated he would address this with the Committee. Judge Atkinson explained that defense counsel is supplied by the State Public Defender's Office by state statute. The Public Defender's Office has staff members in-house, but they cannot handle the entire caseload of defendants so they then hire private attorneys at the rate of \$40 an hour which is set by the state legislature. In a case many years ago, State v. Dean, a ruling was made that if a person is not eligible for a public defender but still could not afford an attorney, Circuit Court judges could make an appointment of counsel of private members of the bar and those appointments are paid \$70 per hour. What happened is that because of the low pay for the state public defenders, attorneys will not take the cases so defendants are sitting in jail and out on signature bond and come to court and say that no attorney has been assigned. The Public Defender's Office often indicates they have called 50 – 100 attorneys and none of them would take the case at \$40 an hour.

Judge Atkinson continued that both the US Constitution and the State Constitution have provisions that guarantee defendants the right to a speedy trial. Judges have to weigh the constitution provisions for the right to a speedy

trial versus the Public Defender's Office failure to obtain counsel to represent the defendants so some judges have been appointing counsel at the county expense of \$70 per hour. Some judges thought to get the cases moving along they could appoint the county attorneys at \$70 an hour, but then bill the Public Defender's Office \$40 an hour, costing the county only \$30 an hour, but the Public Defender's Office will not pay the \$40 an hour because it is not their appointment. Judge Atkinson said this is not included in the budget because when the budget was submitted this issue was not anticipated.

Buckley indicated he talked to Jeff Cano at the Public Defender's Office who assured that if contacted, the Public Defender's Office makes every effort possible to get an attorney appointed as soon as possible. Cano is frustrated as well with this situation in that it could make it harder for him to find attorneys to appoint because they know if they just hold out long enough, the court will appoint them at the higher rate. The court may have the ability to appoint these attorneys, but there is not a line item for this. Judge Atkinson agreed and indicated that he has notified the judges of this issue. He noted each judge is individually elected and each has their own interpretation as to what a speedy trial is and decisions are made individually on each case.

Buckley said if this is something we need to put money towards, there needs to be some guidelines and parameters as to how the money would be authorized because at this time judges are authorizing money that is not there. Judge Atkinson noted there is money allocated for the regular appointments, but with the acceleration of appointments this early in the year, that budgeted amount will run out. Supervisor Schadewald feels a reporting mechanism is needed on this so the Board can see what this is costing us. The County Board cannot tell judges what to do or how to do it, but the Board does have to watch the budget.

Gruszynski said there has been no appetite in the Governor's office over the last 8 years to raise the public defender rates but he is hopeful that with the new administration in Madison, this is something that will be addressed. He feels it is important to know that there is lack of action. Judge Atkinson said they are constantly seeking increases in payments through the Director of State Courts and Circuit Judges Association. The rate of \$40 an hour has been ridiculously low for many years. Legislators have also been contacted on this and this has also been addressed through the District Attorney Organization as well as through the Criminal Justice Coordinating Board, so there has been a barrage of information going to Madison and Judge Atkinson is hopeful there will be movement on this issue with the new administration.

Clerk of Courts John Vander Leest said his office receives the bills for the court appointed attorneys after the case is concluded and hopefully there has been a wage assignment for repayment and then they try to collect any balance. His office also pays the public defender bills through the court appointed attorney line item, but they cannot ask for repayment from the defendants. In December 2018 there have been 40 cases appointed and those costs could range from \$350 - \$1000 or more per case.

Buckley suggested Judge Atkinson take this back to the judges again and perhaps ask Corporation Counsel or the Director of Administration to come and help explain to the judges that there is not a budget for this. There needs to be some sort of mechanism and guidelines as to if the appointment is truly needed. Judge Atkinson understood and reiterated that the phrase "right to a speedy trial" is something that is independently determined by each judge and therefore a standard guideline is not possible. He gave high praise to Jeff Cano and said the judges work closely with him, but noted that Cano is still subject to the acceptance of attorneys to take the cases at \$40 an hour. Judge Atkinson said the judges do not take this lightly and noted they take an oath to uphold the Constitution and recognize that it is their duty and obligation to comply.

Vander Leest added that court appointed attorneys can also ask for investigative costs and he has received bills for investigations which range from \$500 - \$1000 in addition to the attorney bills.

Motion made by Supervisor Schadewald, seconded by Supervisor Gruszynski that the costs for court appointed attorneys be tracked and reported to the Public Safety Committee. Vote taken. MOTION CARRIED UNANIMOUSLY

4. Director's Report.

With regard to courthouse security, Judge Atkinson informed they have received the Dewberry report and it will be discussed at the next judge's meeting on February 11. The report gives three options, and the judges want to rank the options in order of preference and give their recommendations to Facilities and the Courthouse Security Committee who will meet later in the month.

Motion made by Supervisor Nicholson, seconded by Supervisor Gruszynski to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Clerk of Courts

5. Report re: 2019 Courthouse Security Conference.

Clerk of Courts John Vander Leest informed he will be attending the Courthouse Security Conference in Appleton in March. He said some counties send administration and County Board members and noted that scholarships are available.

Motion made by Supervisor Nicholson, seconded by Supervisor Schadewald to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

6. Clerk of Courts Report.

Vander Leest provided the Committee with a handout of 2019 highlights in the Clerk of Courts Office, a copy of which is attached. He outlined each of the highlights with the Committee. With regard to the SDC, Gruszynski asked if once the 20,000 case backlog gets caught up, if there will be a point where the rate of return will be diminished. Vander Leest responded that the first few years will have the highest return, but after that, a new base will be established that will be fairly stable, and he noted that the SDC has a higher rate of success for collections than other entities.

Motion made by Supervisor Nicholson, seconded by Supervisor Gruszynski to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Medical Examiner

7. Medical Examiner's Report.

No report; no action taken.

Public Safety Communications

8. Update re: CAD System.

Director of Public Safety Communications Cullen Peltier and Captain John Rousseau addressed the Committee. Capt. Rousseau is heading up the law enforcement user group that has been working on prioritizing the issues with the CAD. As reported last month, the CAD system went live on December 12 and there were a number of major issues after go live that were not experienced in testing. The two largest of those issues were resolved several weeks ago. The goal was to then start working on the other issues and get those knocked off but the progress has not been as fast as they would have liked and at this time Peltier does not believe it is prudent to continue to put his staff and the officers and firefighters on the road through the challenges that trying to work through these issues is creating. He believes they are still able to do their jobs, but it has been very difficult in the last month or so while they work on the issues.

At this time Peltier recommended the County roll back to the previous CAD system and then explore the options. This will present some challenges and he has been working with TS staff, Sheriff's Department staff and his staff to determine what will be entailed to roll back. It will not be a quick process and there will still be challenges, one of which is that at least one interface needs to be setup. Peltier has called a meeting for tomorrow and has invited all

the agencies to come in so they can go over the issues with the rollback and define the role they will need to take and then start exploring what the options are once they roll back.

Captain Rousseau said the user group has met and from a law enforcement perspective they have done their due diligence and have had a lot of communication back and forth with the company and expected to see certain results and serious changes to some of the core responsibilities law enforcement have, but they have not seen that at the pace that is needed for the officers on the road. The law enforcement group agrees with Peltier's recommendation to roll back and feels that this is the best way to move forward.

Schadewald appreciated the hard decisions being made and he knows the issues with this. He appreciates the honesty and diligence and agreed that if the new system is not working, the roll back is what we have to do. Gruszynski noted that in the past it was explained that the prior system is being phased out and questioned how rolling back is possible. Peltier said there are options that can be done before the absolute end of life on the product which is August 2020. Gruszynski also questioned the contractual obligations for this. Corporation Counsel Dave Hemery responded that the County does have a contract with Securus and he has reviewed it. There are a lot of issues and negotiations that will have to take place depending on the decisions the County makes with regard to rollback, but he noted that the rollback is entirely feasible.

Motion made by Supervisor Nicholson, seconded by Supervisor Borchardt to suspend the rules to allow interested parties to speak. Vote taken. MOTION CARRIED UNANIMOUSLY

Note: Nobody came forward to speak to this matter.

Buckley said Peltier and his staff, Captain Rousseau and a number of others have been working very hard to make this work. Going back to the old system is not going to be easy, and at some point we will have to go forward with another system. He urged those who use the product every day to provide their insight and thoughts on this to Peltier.

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to return to regular order of business. Vote taken. MOTION CARRIED UNANIMOUSLY

Peltier commended his staff, TS and the GIS coordinator who have all been working so hard on this entire project and said they put a lot of time and effort into it. It is a little defeating to them, but they are committed to work through it. Buckley also commended Peltier and Captain Rousseau for the work they have done on this.

No action taken.

9. Director's Report.

Motion made by Supervisor Nicholson, seconded by Supervisor Schadewald to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Emergency Management

10. Director's Report.

Motion made by Supervisor Nicholson, seconded by Supervisor Gruszynski to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

District Attorney

11. District Attorney Report.

Office Manager Michele Andresen informed that DA Lasee is working with Corporation Counsel on resolutions for a criminal justice funding proposal and to criminalize OWI first.

Motion made by Supervisor Schadewald, seconded by Supervisor Gruszynski to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Sheriff

12. Update on Jail Addition – *Standing Item.*

Sheriff Todd Delain indicated this is moving forward and the schematics will be presented at the next Public Safety Committee meeting.

No action taken.

13. Key Factor Report through December 2018.

Motion made by Supervisor Schadewald, seconded by Supervisor Gruszynski to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Motion made by Supervisor Schadewald, seconded by Supervisor Gruszynski to suspend the rules to take Items 14 – 21 together. Vote taken. MOTION CARRIED UNANIMOUSLY

14. Budget Adjustment Request (19-002): Any increase in expenses with an offsetting increase in revenue.

15. Budget Adjustment Request (19-003): Any increase in expenses with an offsetting increase in revenue.

16. Budget Adjustment Request (19-004): Any increase in expenses with an offsetting increase in revenue.

17. Budget Adjustment Request (19-005): Any increase in expenses with an offsetting increase in revenue.

18. Budget Adjustment Request (19-006): Any increase in expenses with an offsetting increase in revenue.

19. Budget Adjustment Request (19-008): Any increase in expenses with an offsetting increase in revenue.

20. Budget Adjustment Request (19-009): Any increase in expenses with an offsetting increase in revenue.

21. Budget Adjustment Request (19-010): Any increase in expenses with an offsetting increase in revenue.

Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to approve Items 14 – 21. Vote taken. MOTION CARRIED UNANIMOUSLY

22. Sheriff's Report.

Delain said yesterday a number of awards were presented to law enforcement officers as well as citizens for outstanding work they have done in the last year and he was honored to be part of that event.

Motion made by Supervisor Schadewald, seconded by Supervisor Borchardt to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

Communications

23. Communication from Supervisor Schadewald re: This is my request for the Facilities Director to attend February Public Safety Committee meeting to report on the following: Courthouse Security update, copper roof update and maintenance at Courthouse. *Motion at January meeting: To refer to the February Public Safety Committee meeting and ask Public Works Director Paul Fontecchio to attend.*

Schadewald wished to be updated on courthouse security, the copper dome at the courthouse and other courthouse maintenance. Public Works Director Paul Fontecchio said the right level of security is something the Sheriff's Department would have to determine. After that is determined and the County Board agrees, Facilities will be the department that would administer the plan, secure the architects and oversee the work, but Facilities does not get involved of what the right level of security should be.

With regard to the copper dome, Fontecchio informed the project is out for bids. March 5 is the deadline for bids and then the work will be done when the weather is right this spring or summer.

With regard to general maintenance of the courthouse, Borchardt asked how often the exterior is cleaned, what happens when there are missing tiles, etc. She wants to be sure the building is taken care of and being maintained appropriately to keep it as historical as possible. Fontecchio responded that the courthouse is one of the better funded County buildings from a maintenance standpoint. This year's budget contains funds for deep cleaning of the courthouse and a number of other buildings. There are also line items in the budget each year for things like carpet cleaning and tile replacement and other maintenance items.

Fontecchio informed he would like to have a presentation placed on the next Public Safety agenda for Venture Architects to come and share the schematic designs for the jail and medical examiner's office.

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

- 24. Communication from Supervisor Schadewald re: This late communication is my request for a review of the programs, services and/or county involvement for children (birth to age 4) that are in need of assistance. *Referred from January County Board.***

Schadewald informed this communication has gone to several other committees. He asked if Circuit Courts, Clerk of Courts or Probate have any programs that deal with children from birth to age 4 other than custody and guardianship. Vander Leest informed the Clerk of Courts does not have any programming related to children. Judge Atkinson informed the Circuit Courts do not have any specific programs, but they do see children in custody disputes and CHIPs cases. Sheriff Delain said the Sheriff's Department assists the Circuit Courts in custody issues when necessary as the action arm of the Circuit Courts. The Sheriff's Department may also assist if a social worker requests it when they are seeking temporary physical placement until a child safety issue can be resolved through the Courts.

Motion made by Supervisor Nicholson, seconded by Supervisor Borchardt to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY

- 25. Communication from Supervisor Deslauriers re: Whereas the Brown County Board of Supervisor's has the legal authority to restore 'Protective Occupation Participant' status to Brown County Corrections Officers and,
Based on the criterial established in Wisconsin Statute 40.02(48)(a), the "principal duties" of Brown County Corrections Officers "involve active law enforcement," requires "frequent exposure to a high degree of danger or peril," and also requires "a high degree of physical condition," and
Based on chronic Correction Officer understaffing (that will potentially be made worse with the expansion of the Brown County jail), that it is important to the health, safety, and welfare of Corrections Officers, our inmates, and the general public to provide a stronger incentive package to attract and maintain Corrections Officers, and
Based on the costs of restoring protective status when compared to the costs to recruit and train new Corrections Officers, Brown County sees the financial value of restoring protective status.
That the Brown County Board of Supervisors supports restoring and funding 'Protective Status with Social Security' for Brown County Corrections Officers. *Referred from January County Board.***

Correctional Officers lost their protective status following Act 10. Buckley said there has not been any disagreement by the County Board as far as wanting to bring back the protective status; we are just waiting for the legislature to do something. Sheriff Delain said former Sheriff John Gossage has advocated very heavily for

protective status for the county's correctional officers. Sheriff Delain said he also supports protective status for the correctional officers 100% and noted last time this was before the County Board for a vote on supporting legislation to support protective status it passed 26-0.

Supervisor Deslauriers asked the Committee to open the floor to allow several correctional officers to speak.

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to suspend the rules to allow interested parties to speak. Vote taken. MOTION CARRIED UNANIMOUSLY

-Officer Dustin Dimmer, 3030 Curry Lane, Green Bay, WI

Dimmer read a statement to the Committee, a copy of which is attached that explains his job duties and why consideration should be given to returning protective status.

-Jail Corporal David Sturm, 3030 Curry Lane, Green Bay, WI

Sturm read a statement, a copy of which is attached, regarding why he is keeping his appeal open regarding his loss of protective status and now being classified as a general municipal employee.

-Officer Brian Nies, 3030 Curry Lane, Green Bay, WI

Nies read a statement from Corporal Jeffrey Mekash, a copy of which is attached, as well as a letter that was sent to the ETF in support of his own appeal, a copy of which is also attached.

Deslauriers said he has been looking at this issue for a long time and has done some research as to what other counties are doing. He informed it is within the purview of the County Board to declare the correctional officer positions as protective status positions. The duties of the correctional officers on a daily basis include everything from firefighting to inmate control and it is obvious that they meet the statutory requirements that they should have protective status. Deslauriers said the County Board has the power to fix this and said there is plenty of time for the administration to prioritize and appropriately fund this effort. The officers here tonight have been very patient in this matter.

Deslauriers continued that other counties have declared the positions as protective status, and the ETF does not fight that determination. Brown County has been supportive of protective status and he hopes that is still the desire. He views this not as a benefit, but as what they deserve and feels it is an appropriate award for the job they do. If these positions were to be declared protective status, it would be possible that the administrative arm could object to that and it could be overturned, but that would be politically unusual. Deslauriers wrote this communication very specifically to make sure people know why he is asking for these things. He noted the current job posting for correctional officers clearly states the law enforcement aspect of the job and indicates the job requires frequent exposure to a high degree of danger or peril and also requires a high degree of physical condition. Supervisors of the correctional officers who are not hands on and rarely involve themselves specifically with inmate interactions are classified as protective status and Deslauriers does not feel that is right.

Deslauriers continued that there has been chronic trouble staffing these positions and, further, the turnover is higher than it should be. This is a very difficult job and without the protections that protective status gives, Deslauriers feels it becomes a very unwanted job. He feels having protective status would make recruitment and retention of correctional officers easier. He would like to see the County Board declare this as a protective status role with appropriate funding to get these officers the protection and benefits they deserve to protect themselves and their families, as well as the inmates.

Borchardt asked if there are any debriefing or mental health services available to correctional officers. It was stated that when there is something traumatic or when they go hands on or use force, there is usually a debrief and they are also made aware of other resources such as EAP and the jail chaplain. Borchardt thanked these officers for all they go through.

Supervisor Nicholson said before he was on the County Board, he was a police officer in a large city and he has worked in other areas of law enforcement, including in a jail. He knows what this job entails and does not like that

they lost protective status as he believes the correctional officers go through the same dangers as officers on the front line. He supported protective status in the past and will continue to do so.

Motion made by Supervisor Schadewald, seconded by Supervisor Nicholson to return to regular order of business. Vote taken. MOTION CARRIED UNANIMOUSLY

Hemery provided a handout containing Senate Bill 2019 SB5 which addresses a lot of the issues raised here as well as some FAQs from the ETF website and a decision regarding the five jail employees that appealed not making them protective status, copies of these documents are attached.

The current bill in the Senate would make jailers protective occupant participants which would give them a lower retirement age along with a higher percentage multiplier regarding calculating retirement annuity benefits. When this was last up before the County Board, one of the concerns raised was regarding creating new collective bargaining units. Bill 2019 SB5 specifically defines jailers for purposes of bargaining as general municipal employees. The bill addresses concerns that many counties have regarding providing additional bargaining rights and also addresses concerns regarding costs of making jailers protective occupant participants and therefore public safety employees. Should this bill pass, the jailers would be required to pay all additional employer costs resulting from their classification as protective occupant participants, including the cost of the duty disability program. This bill seems to address the concerns of both the jailers and the County Board and the bill is currently making its way through the legislature.

Nicholson asked if the County can implement this on its own. Hemery responded that for the County to determine the jailers are protective occupant participants, the County Board would have to determine the three requirements are met. Those three elements are:

1. That jailers duties involve active law enforcement, which is defined as using 51% or more of their time in traditional law enforcement duties;
2. That there is frequent exposure to a high degree of danger or peril; and
3. That the job requires a high degree of physical condition.

If the County Board were to find that our jailers meet those three criteria, the County Board could designate them as protective occupant participants and when that is forwarded to the ETF, they would then be classified as protective occupant participants and public safety employees.

Hemery continued that the employees that would receive protective if this bill would pass would be required to pay all additional employer costs and in turn they would receive the benefits of the earlier retirement and the higher multiplier. County jailers who were classified as protective occupant participants before the bill's effective date are not required to pay the additional costs.

Based on the list of cosigners of the bill, Gruszynski has more hope for this piece of legislation than he has in the past because it has bipartisan authors and sponsorship and that is important to recognize.

Deslauriers is not content to wait for the bill, whose wording is likely to change, and he is not willing to saddle the correctional officers with the costs of their benefits. He feels this is an issue that the County Board can handle on their own and then pass on to the administration to find the funding for the next budget. He does not want to rely on Madison when we can handle this on our own. The job description of a correctional officer for the current opening requires knowledge of and compliance with all applicable state and federal laws and further states that physical conditioning is required due to the environment in which they work in that a correctional officer must be able to defend themselves and others from physical harm. Deslauriers said since the County Board has the ability to correct this wrong, we should do it instead of waiting on Madison. He feels we all clearly understand this is the correct thing for the position and he said he took his Supervisor job to right wrongs which is what he is asking for. Deslauriers said there are a number of other counties doing this. He noted that the statutory requirement for active law enforcement is 51% of the duties, not the time spent which is a really important distinction.

Buckley said the County has been dealing with protective status since it was removed. He noted that a correctional officer and a police officer are two different jobs. He is concerned about the 51% element of duties being law enforcement and said the County Board will have to look at all aspects of this. If 51% of the time is law enforcement, are they deputies? There is also the question of whether they would belong to the collective bargaining unit. These are questions that need to be answered and considered before a change is made. Buckley is not saying the correctional officers do not deserve the protective status, but there are concerns that need to be addressed as to how they are categorized and what it means to the makeup of the Sheriff's Department.

Supervisor Deneys informed the first 3 months of his 30 year law enforcement career was spent in the jail and he did not want to go back, for some of the same reasons stated at this meeting. He feels there are avenues to look at what these correctional officers do and whether or not they deserve the protective status. He truly feels they do, but he also feels we need to examine this closely to be sure things are done the appropriate way. One of the things that has not been talked about is the Sheriff's deputies paying more for their benefits. He wants to be sure it is understood that the Sheriff's deputies do pay a portion of the added benefit; when the County pays its portion, there is an added cost to the employee because they do pay that matching cost.

Buckley noted nobody seems to disagree the correctional officers should have protective status; the question is how to go about doing it. In the past, the clearest way was to try to get the law clarified and that has to be done through Madison. As much as we disagree with that process, if it has to go to court as to what the status is, we need that clarification. After seeing who has signed onto the bill, Buckley is hopeful it will pass. He would put this back on Corporation Counsel or the Sheriff to determine how this will affect the County.

Deslauriers does not disagree with the points made, except for the legal authority to take action and he reiterated that the County Board has the authority to do a declaration for this position for protective status. It is another avenue to get this accomplished instead of waiting on Madison and relying on a bill for which we have no control over the wording. He feels this can draft this in a way that works for Brown County. This is not improper or illegal and is something that has already been done by other counties and ETF has not contested it. He strongly feels this is a County function and would like to move towards that.

Buckley recalled that several years ago money was set aside for this. He feels it is not so much about the money; it is the fact that it needs to be done properly. He understands there is authority to do it, but it also needs to be understood that there are ramifications such as back pay issues, are they considered deputies, etc. This has to be done correctly so it does not end up costing more on the back end.

Gruszynski clarified that ETF could challenge this and also questioned if this would open the County up to legal challenges. Hemery responded that the County Board would have to agree that the three elements he referenced earlier are met and the County would then send the form to ETF stating that the jailers are now protective occupation participants. ETF, as a matter of course, does not look closely at decisions counties are making and they usually go along with what they receive from counties. However, another entity could challenge that, similar to the case that he provided and those matters can be appealed in court. If the County were to make the declaration, odds are the ETF would take that at face value and would treat the jailers as protective occupation participants and public safety employees, but again, there is not a clear procedure for challenging a determination like that.

Hemery continued that one of the main issues the bill addresses is that even though the bill would make jailers protective occupation participants and therefore public safety employees, it specifically states that jailers are general municipal employees, which means they do not have the same bargaining abilities as public safety employees. If the County were to go ahead and declare them protective occupant participants prior to the passage of the bill, the right to bargain would go along with that.

Motion made by Supervisor Gruszynski, seconded by Supervisor Schadewald to refer to Corporation Counsel to bring the resolutions passed in other Wisconsin counties as well as a fiscal impact back to the next meeting. Vote taken. MOTION CARRIED UNANIMOUSLY

Other

26. Audit of bills.

**Motion made by Supervisor Schadewald, seconded by Supervisor Gruszynski to acknowledge receipt of the bills.
Vote taken. MOTION CARRIED UNANIMOUSLY**

27. Such other matters as authorized by law. None.

28. Adjourn.

**Motion made by Supervisor Borchardt, seconded by Supervisor Schadewald to adjourn at 5:52 pm. Vote taken.
MOTION CARRIED UNANIMOUSLY**

Respectfully submitted,

Therese Giannunzio
Administrative Specialist

BROWN COUNTY HEALTH & HUMAN SERVICES

Treatment Alternatives and Diversion Program
300 E. Walnut St.
Green Bay, WI 54301



Phone (920) 391-4849 Fax (920) 391-4849

Total # in Treatment Courts (High Risk/Need): 94 participants

Total # in Diversion (Low Risk/Need): 56 participants

Total # graduated in last reporting period: 22 participants

Drug Court:

Judge Marc Hammer

Category	Number
Total Participants to Date	138
Current Participants	23
Individuals in Referral Process	5
Successful Graduates	47
Terminations within the first 60 days of acceptance	6
Total Number of Terminations (after 60 days)	51
Graduations in the last reporting period	6

The Brown County Drug Court held its first court session on 7/31/09. The target population of Drug Court are individuals that have had heavy involvement with the criminal justice system (Prior Prison Sentences, Failed Probationary periods or Treatment, Significant Criminal Charges) that have an identified AODA need. The national average for terminations in Treatment Court is between 25-40%; with 138 total participants and 57 terminations we are currently at 40%. If you exclude terminations that occurred within the first 60 days of acceptance our termination rate is at 36%.

NEW Veterans Treatment Court:

Judge Donald Zuidmulder

Category	Number
Total Participants to Date	87
Current Participants	13
Individuals in Referral Process	1
Successful Graduates	68
Terminations within the first 60 days of acceptance	6
Terminations related to absconding (including those within 60 days acceptance)	4
Total Number of Terminations (after 60 days with the Court)	10
Graduations in last reporting period	8

The NEWVTC accepted its first participant on 3/20/2012. The NEWVTC Treatment Court is designed specifically to staff and handle cases involving offenders with veteran status through an intensive, judicially monitored program of alcohol, drug, and mental health treatment,



Mental Health Court:
Judge Donald Zuidmulder

Category	Number
Total Participants to Date	61
Current Participants	20
Individuals in Referral Process	6
Successful Graduates	21
Terminations within the first 60 days of acceptance	7
Maximum Benefits Achieved	14
Total Number of Terminations (After 60 days in the program)	13
Graduations in last reporting period	5

The Mental Health Court accepted its first participant on 03/20/2015. The Mental Health Court serves individuals within the community who have a diagnosed serious/persistent mental health need. Additionally, that unmet need is evidenced to be the primary factor behind their ongoing criminal justice involvement. The Mental Health Court's goals are to re-establish participants with their providers, develop an obtainable independent living plan, and provide intensive case management and supervision services. The national average for terminations in Treatment Court is between 25-40%; with 61 total participants and 20 terminations we are currently at 32%. If you exclude terminations that occurred within the first 60 days of acceptance our termination rate is at 21%.

Heroin Court:
Judge Thomas Walsh

Category	Number
Total Participants to Date	67
Current Participants	18
Individuals in Referral Process	3
Successful Graduates	31
Terminations within the first 60 days of acceptance	7
Total Number of Terminations (After 60 days in the program)	20
Graduations in last reporting period	3

Heroin Court accepted its first participant on 03/26/15 and held its first court date on 4/2/16. The purpose of the court is to specifically address the growing abuse of Heroin and Opiates in Brown County and to provide comprehensive treatment and supervision services to individuals within Brown County. In addition to serving the High Risk/Need population that exhausted conventional means of supervision and treatment, the Heroin Court also admits individuals with first time heroin/opiate crimes in order to preemptively provide the needed services to reduce risk of serious harm. The national average for terminations in Treatment Court is between 25-40%; with 67 total participants and 27 terminations we are currently at 40%. If you exclude terminations that occurred within the first 60 days of acceptance our termination rate is at 19%.

OWI Court
Judge John Zakowski

Category	Number
Total Participants to Date	20
Current Participants	20
Individuals in Referral Process	2
Successful Graduates	0
Terminations within the first 60 days of acceptance	0
Total Number of Terminations	0

OWI Treatment Court accepted its first participant on 7/2/18 and held its first court session on 11/06/18. The OWI Treatment Court's target population are individuals that have an OWI 4th and above with a B.A.C of .15 and above.

Brown County Diversion Program (Numbers are from 10/2016)

Category	Number
Total Participants to Date	325
Current Participants	56
Successful Graduates/Completed	188
Total Number of Terminations	81

The purpose of the Brown County Diversion program is to divert low risk or first time offenders away from the criminal justice system. This is done by addressing the "root" of the problem that led to the criminal activity. All referrals come for the District Attorney's office for consideration.

Brown County Treatment Court Statistics

Heroin Court

Police Calls/Contacts (Prior Heroin Court)	Jail Placements (Prior Heroin Court)	Police Calls/Contacts (Post Heroin Court)	Jail Placements (Post Heroin Court)
1296	499	87	62

There was a 94% decrease in Police Calls/Contacts during and after completion of Heroin Treatment Court and 88% decrease in Jail Placements from pre to post treatment court.

Veterans Treatment Court

Police Calls/Contacts (Prior VTC)	Jail Placements (Prior VTC)	Police Calls/Contacts (Post VTC)	Jail Placements (Post VTC)
405	263	133	33

There was a 67% decrease in Police Calls/Contacts during and after completion of VTC and a 88% decrease in Jail Placement from pre to post treatment court.

Mental Health Court

Police Calls/Contacts (Prior MHC)	Jail Placements (Prior MHC)	Police Calls/Contacts (Post MHC)	Jail Placements (Post MHC)
1232	547	137	71

There was a 89% decrease in Police Calls/Contact during and after completion of MHC. There was a decrease of 88% of jail placements during and after MHC.

Drug Court

Police Calls/Contacts (Prior Drug Court)	Jail Placements (Prior Drug Court)	Police Calls/Contacts (Post Drug Court)	Jail Placements (Post Drug Court)
1194	591	74	98

There was a 94% decrease in Police Calls/Contact during and after completion of Drug Court. There was a decrease of 84% of jail placements during and after Drug Court.

OWI Treatment Court

Police Calls/Contacts (Prior Drug Court)	Jail Placements (Prior Drug Court)	Police Calls/Contacts (Post Drug Court)	Jail Placements (Post Drug Court)
133	92	0	0

Total of All Brown County Treatment Courts

Police Calls/Contacts (Prior Treatment Court)	Jail Placements (Prior Treatment Court)	Police Calls/Contacts (Post Treatment Court)	Jail Placements (Post Treatment Court)
4260	1992	431	264

Overall when you factor in all of the Treatment Courts there is a 90% decrease in Police Calls/Contacts and a decrease of 87 % in Jail Placements post involvement with Treatment Courts.

CLERK OF CIRCUIT COURT

100 SOUTH JEFFERSON STREET
P.O. BOX 23600
GREEN BAY, WISCONSIN 54305-3600
TELEPHONE (920) 448-4155
FAX (920) 448-4156
WWW.CO.BROWN.WI.US/CLERK_OF_COURTS



JOHN A. VANDER LEEST
CLERK OF CIRCUIT COURT

JULIE HORNBURG
CHIEF DEPUTY

2019 Highlights

- Juvenile e-filing starts on Feb 11-12. CCAP will be on hand to train Corporate Counsel office, Social workers, Clerk of Courts staff, Judicial Assistants and Judges.
- SDC project is a priority. My office will complete the move of 20,000 collection cases from CMC (collection agency) to SDC by Sept 2019. This will increase revenues to the Clerk of Courts office considerably for the 1st year (\$200,000 or more) and going forward will raise the base revenues by 10-15% (\$100,000 to \$150,000). These are estimates based on other Counties feedback with SDC.
- Cross training of Clerk of Courts employees is a priority. We have identified positions that need additional backups so multiple employees can complete various job duties when needed.

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To whom this may concern,

Good Evening, I am Officer Dimmer; I have worked at the Brown County Jail and Juvenile Detention Center since January 21st, 2008. Throughout my career at the jail, I have worked in every bulletin position possible and here are some reasons I believe we should be considered to receive our protective status back. Since I started in 2008, I knew the dangers of the career I chose but at the same time knew the benefits were well worth the dangers I along with my fellow employees face on a daily basis. Since my first day of employment with the Sheriff's Office we go through an extensive training process. Two areas of interest I would like to point out are Principles of Subject Control (POSC) and Professional Communication Skills (PCS). These two areas of training we receive through our Use of Force Instructors is very extensive and is very close to the standard of which any law enforcement officer receives who gets to be categorized as a protective status employee. Since we have been reclassified as a general employee, the Jail Division of the Brown County Sheriff's Office has lost a lot of good employees with great experience to other careers because the benefits are no longer worth the chance of getting hurt or injured for a job many people consider a thankless one at the very least. I went to school for law enforcement and I am proud for the career I have chosen and the duties I complete on a daily basis.

The thing that baffles me the most is the same people who commit a heinous crime where the general public is so shocked that it even happened in our quiet community are the same people we deal with on a daily basis housed under the same roof. What most people do not realize is the fact of once these criminals are off the streets, us as correctional officers now have to deal with the same person who may have committed a homicide, armed burglary, assault or a domestic violence related crime. I strongly feel that most people who have no family or friends who actually work inside a correctional setting have no idea what goes on inside one. No general employee who does not work in a correctional setting can say that they know what goes on inside one, what the smell is like, getting spit on, getting bodily fluids thrown at you, seeing someone eat their own feces, find an inmate laying in his own blood after cutting himself with a sharp object. Once these criminals are off the streets, their type of thinking or behavior does not change, and of course everyone is happy that the criminal is locked up, but they do not turn into a law abiding person because they have a jail uniform on and are placed into a cell or dayroom with other inmates.

Through my experience working as a correctional officer I have experienced the following: a staff member being taken hostage by two inmates trying to escape our facility, numerous staff assaults such as getting spit on, having bodily fluids thrown at us, inmates attempting to physically come after us while completing security rounds, numerous inmate to inmate assaults which caused some inmates to be sent out to a hospital for serious medical attention, many suicide attempts along with a few successful suicide attempts and severe mental health issues where a correctional setting is not appropriate for them to be in but there is no other option to house them. I currently work in our booking section of the jail where new arrestees are brought in by law enforcement agencies. I deal with these agencies on a daily basis whether it is booking their new subjects, entering new charges, adding on charges, assisting them with bail/bond conditions, pat searching new bookings then on top of all

these things deal with the emotional stress and behaviors of new subjects who many times display behavior that is unpredictable and or threatening. We are required to abide by Wisconsin Statutes while on duty; we get subpoenaed to court to testify under law for incidents that occur in our jail setting. We all take a chance coming to work on a daily basis not knowing if we are going to get hurt or exposed to a contagious disease, that we may have to live with for the rest of our lives.

In closing, I again would like to remind you that the inmates we deal with on a daily basis are the same individuals brought into the jail of which law enforcement made their initial contact with. Then once these individuals are sentenced to prison they are shipped off to another facility for the rest of their incarceration. From start to end, the officers who deal with these individuals have protective status except for us, the middle agency, how does this make any sense at all, especially when we as correctional officers in a county jail have essentially the same job duties as a prison guard within Wisconsin. Thank you for your time and listening to this very important topic for us.

David Sturm
3030 Curry Lane
Green Bay, WI 54311

To whom it may concern,

I wanted to write this letter to explain why I am keeping my appeal open in regards to me losing my protective status and now being classified as a general municipal employee for Brown County. I started as a Correctional Officer for Brown County in April 2007. When I started, I understood the dangers of the job. I also understand how a majority of the outside world has no clue as to what a Correctional Officer hears, sees, smells, and unfortunately sometimes tastes. There are no social media platforms allowed in the jail so how would anyone really know what happens in the jail. It's only correctional staff that knows what really goes on.

During my almost twelve years of service for Brown County, I have witnessed some of the following acts: inmates taking an officer hostage, inmates have assaulted staff to where they needed medical attention, inmates have thrown bodily fluids at staff, threats have been made to Correctional Officers and their families, jail staff having to use force to control and protect themselves from a combative inmate(s), jail staff having to perform life saving measures on an inmate that committed suicide, and staff having to put on tactical gear to move an inmate from one location to another against their will.

As a trainer and first line supervisor for the Brown County Jail, I am forced to deal with almost all of the examples above. I also have other aspects of my job that I would like to share. I issue court dates and court orders, work with law enforcement as we are an important piece of the law enforcement community, been subpoenaed to numerous court cases, write up paperwork that turns into a warrant, and run people for warrants and criminal histories. When I train jail staff members, I train them in a system called Principles of Subject Control (POSC) and Professional Communication Skills (PCS), These are both adopted and used by the state of Wisconsin to teach officers, state correctional officers, and probation agents. With POSC and PCS, officers are taught tactics on how to protect themselves and others from assaults, sexual assaults, and if justified the criteria for deadly force. All correctional staff in Brown County goes through this training as it is required by Wisconsin statutes and policy/procedure of the Brown County Jail.

I've seen too many Correctional Officers leave Brown County because of this decision to remove protective status. Some of these officers were good officers with double the experience that I have. Correctional Officers working in the Department of Corrections, prisons, have protective status. All of the inmates they deal with come from the county jails such as Brown County. Probation Agents working for the Wisconsin Department of Corrections have protective status. All of the offenders they have come from the county jails such as Brown County. All police officers and Sheriff's deputies have protective status. All of their arrestees are transported to the county jails such as Brown County.

In conclusion I am respectfully asking that the decision be reversed and that I get my protective status back along with my other fellow Correctional Officers. I feel it is a gross injustice for us to be classified as general municipal employees. No other general municipal employee can say they have experiences what I have. No other general municipal employee can say they received the same type of training as I have. No other general municipal employee can say they've seen their co-worker worry about their safety or their family's safety because an inmate made a creditable threat against their life. And no other general municipal employee is taught, has it in their policy, and is expected to know what deadly force is. If Jail and Sheriff administration would approve it, I'd welcome you to come and job shadow us so you can see for yourself what a Brown County Correctional Officer deals with and goes through on a daily basis.

Thank you for the opportunity of correspondence,

David Sturm

02/06/2019

Public Safety Board,

Sorry that I cannot make this meeting but would like my letter to be included in the meeting notes.

I am asking that you please review and restore Protective Occupation Participant. I have been employed as a Correctional Officer since 2005 with the Brown County Sheriff's Office. Every day that I walk in to the jail is an unknown. Personally I have had urine thrown on me, been spit on, and have had threats of bodily harm not only to myself but to my family. I have had inmates able to obtain my personal home address and make threats to show up when inmates become released. Correctional Officers have been told by inmates that I know what time you leave and what doors you exit out of the jail

Studies have shown that Correctional employees experience some of the highest rates of mental illness, sleep disorders and physical health issues of all U.S. workers.

Correctional Officers at the Brown County Jail are dealing with more inmates that are coming in with mental health issues, drug withdrawals and more violent crime individuals.

Hopefully money is not a factor when it comes to safety of Brown County Correctional Officers in restoring the Protective Occupation Status.

Thank you,

Corporal Jeffrey M Mekash 2154

Ms. Peebles

I received a letter from ETF regarding my appeal of my retirement classification while being a correctional officer. I would disagree 100% with the decision to classify correctional officers as general category employees. I would say the decision made by the ETF board is ignorant to the situation. If you follow the path of a criminal you see that everyone involved in the process has protective status except for county correctional officers.

-Police officers that make the arrest have protective status

-County correctional officers that maintain the safety and security of inmates DO NOT have protective status

-State correctional officers that maintain the safety and security of inmates while in prison have protective status

-Probation and Parole officers that monitor former criminals have protective status.

Why is it that only one section of the officers that maintain the safety and security of criminals do not have protective status? To say that county correctional officers are not exposed to high degree of danger or peril is ridiculous.

There are approximately 700 inmates housed in Brown County that correctional officers must deal with on a daily basis. These are CRIMINALS that broke the law. How can you say that being in a room with criminals is not a dangerous situation? There are staff assaults, inmate fights, riots, deaths, threats, etc.

Correct me if I'm wrong but I believe the statute utilized to determine protective status (40.02 (48) (a)) states 51% or more of the employee's *principal duties* must meet involvement in active law enforcement not 51% of their time.

Are police officers protective status because they have arrest powers? Per ETF, qualifications are not required to possess arrest powers. Correctional officers do however have the authority to detain people. Per our policies we are also required to uphold Statutes of the State of Wisconsin, County Code of Brown County (ordinances) and Laws of any other political subdivision within Brown County. Our policy also states "no officer shall report to work or be on duty as a law enforcement officer when his or her judgment or physical condition has been impaired". (Policy P1 Rules of Conduct). Policy P1b also states it is the "duty of every employee of the Brown County Jail to preserve peace, aid in crime prevention, protect life and property". How are these not considered law enforcement duties that are required of correctional officers every day?

Wis. Statute 40.02 (48) (a) lists several occupations that typically qualify for protective occupation participation. The statute lists "deputy sheriff". The definition they list "is any officer or employee of a sheriff's office except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement". Per the Douglas County court ruling Correctional officers are classified as a "deputy sheriff" and therefore the requirement for "public safety employee" established in Act 10 for protective status should be utilized. Correctional officers are employed by the sheriff's department. The mission statement (located on the Brown County website) states "*Brown County Sheriff's Department - Jail Division is an integral part of the law enforcement community, dedicated to serving all law enforcement agencies in a safe and efficient manner*". The correctional officers of the Brown

County Sheriff's Office complete their law enforcement duties by the following information also provided by the mission statement:

"The Brown County Sheriff's Department - Jail Division will promote a safe, secure and humane housing facility for all staff, inmates, and the community it serves. Brown County is committed to meet or exceed the standards established by the United State Constitution and applicable Wisconsin State Statutes and Administrative Codes".

Correctional officers are trained to utilize several different weapons to include Tasers, O.C. (pepper spray), batons, and stun shields. Regular training sessions are conducted. Correctional officers must stay in good physical shape to be able to control riots, respond to back up calls, handle uncooperative inmates and stay sharp during long shifts.

I would like to continue my appeal based on the above information. I am truly disappointed that the Board came to the conclusion that they did. I invite them to spend some time in a correctional officer's shoes and then have them make the same determination.

Thank you for your time

2019 SENATE BILL 5

ary 23, 2019 - Introduced by Senators MARKLEIN, BEWLEY, DARLING, HANSEN, JACQUE, JOHNSON, LARSON, RISSER, SCHACHTNER, SMITH, TESTIN and BERNIER, cosponsored by Representatives BORN, EDMING, BRANDTJEN, BROOKS, FELZKOWSKI, HORLACHER, JAGLER, KATZMA, KRUG, KUGLITSCH, KURTZ, LOUDENBECK, MACCO, MILROY, MURPHY, MURSAU, NOVAK, PETERSEN, PLUMER, ROHRKASTE, SCHRAA, SHANKLAND, SINICKI, SORTWELL, STEFFEN, STEINEKE, STUCK, SUBECK, SWEARINGEN, THIESFELDT, TRANEL, VANDERMEER and ZIMMERMAN. Referred to Committee on Judiciary and Public Safety.

N ACT *to renumber and amend 40.05 (2) (ar); to amend 40.02 (48) (b) 3., 40.02 (48) (c) and 40.23 (3) (a); and to create 40.02 (17) (n), 40.02 (48) (am) 23., 40.02 (48) (b) 5., 40.05 (1) (a) 7., 40.05 (2) (ap), 40.05 (2) (ar) 2., 40.23 (3) (c), 40.65 (4w), 459.52 (8m) and 111.70 (4) (bn) of the statutes; relating to: classifying county jailers as protective occupation participants under the Wisconsin Retirement System and the treatment of county jailers under the Municipal Employment Relations Act.*

Analysis by the Legislative Reference Bureau

Under current law, participants under the Wisconsin Retirement System (WRS) whose principal duties involve active law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning are classified as **protective occupation participants**. Current law classifies police officers, fire fighters, and various other individuals as protective occupation participants. Under the WRS, the **normal retirement age of a protective occupation participant is lower** than that of other participants and the **percentage multiplier used to calculate retirement annuities is higher** for protective occupation participants.

This bill classifies county jailers as protective occupation participants without a requirement that their principal duties involve active law enforcement or active

fire suppression or prevention. The bill defines county jailers as persons employed by a county whose principal duties involve supervising, controlling, or maintaining a jail or persons confined in a jail, regardless of whether the jailers have been sworn regarding their duties or whether they serve on a full-time basis.

Under the bill, county jailers who become protective occupation participants on or after the bill's effective date and are employed by a county that did not classify county jailers as protective occupation participants on July 1, 2018, are required to pay all additional employer costs resulting from their classification as protective occupation participants, including the cost of the duty disability program. County jailers who were classified as protective occupation participants **before** the bill's

effective date and county jailers hired on or after the bill's effective date in counties that **did** classify county jailers as protective occupation participants on July 1, 2018, are **not** required to pay the additional employer costs. The bill also allows a county jailer to elect at the time of hire not to become a protective occupation participant.

Finally, under the Municipal Employment Relations Act, **public safety employees may collectively bargain over wages, hours, and conditions of employment, and general employees may bargain collectively over only an annual percentage wage increase that does not exceed the annual percentage increase in the consumer price index.** Under MERA, public safety employees and general employees may not be in the same collective bargaining unit. This bill amends MERA so that a county that treats a county jailer as a public safety employee on the effective date of this bill shall continue to treat any person it employs as a county jailer as a public safety employee except that, if the county subsequently raises a question regarding the appropriateness of including county jailers in a collective bargaining unit containing public safety employees, no person the county employs as a county jailer may be treated as a public safety employee.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1SECTION 1. 40.02 (17) (n) of the statutes is created to read:

2 40.02 (17) (n) Notwithstanding par. (d), each participant who is a county jailer
3and who is classified as a protective occupation participant shall be granted
4creditable service as a protective occupation participant for all covered service as a
5county jailer that was earned on or after the effective date of this paragraph [LRB

1inserts date], but may not be granted creditable service as a protective occupation
2participant for any covered service as a county jailer that was earned before the
3effective date of this paragraph [LRB inserts date], unless that service was earned
4while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a
5protective occupation participant.

6SECTION 2. 40.02 (48) (am) 23. of the statutes is created to read:

7 40.02 (48) (am) 23. A county jailer.

8SECTION 3. 40.02 (48) (b) 3. of the statutes is amended to read:

9 40.02 (48) (b) 3. A "deputy sheriff" or a "county traffic police officer" is any
10 officer or employee of a sheriff's office or county traffic department, except one whose
11 principal duties are those of a telephone operator, clerk, stenographer, machinist or
12 mechanic and whose functions do not clearly fall within the scope of active law
13 enforcement even though such an employee is subject to occasional call, or is
14 occasionally called upon, to perform duties within the scope of active law
15 enforcement. Deputy sheriff or county traffic police officer ~~includes~~ also does not
16 include a county jailer, but does include any person regularly employed and
17 qualifying as a deputy sheriff or county traffic police officer, even if temporarily
18 assigned to other duties.

19SECTION 4. 40.02 (48) (b) 5. of the statutes is created to read:

20 40.02 (48) (b) 5. A "county jailer" is an employee of a county whose principal
21 duties involve supervising, controlling, or maintaining a jail or the persons confined
22 in a jail, as assigned by the sheriff under s. 59.27 (1), regardless of whether the
23 employee has been sworn regarding his or her duties or whether the employee serves
24 on a full-time basis. Notwithstanding par. (a), an employer may classify an employee
25 who is a county jailer as a protective occupation participant under par. (am) 23.

1 without making a determination that the principal duties of the employee involve
2 active law enforcement or active fire suppression or prevention. A determination
3 under this subdivision may not be appealed under s. 40.06 (1) (e) or (em). A county
4 jailer is not a protective occupation participant if he or she so elects with the employer
5 under s. 59.52 (8m) or 2019 Wisconsin Act (this act).

6SECTION 5. 40.02 (48) (c) of the statutes is amended to read:

7 40.02 (48) (c) In s. 40.65, "protective occupation participant" means a
8 participating employee who is a police officer, fire fighter, an individual determined
9 by a participating employer under par. (a) or (bm) to be a protective occupation
10 participant, county undersheriff, deputy sheriff, county jailer, state probation and
11 parole officer, county traffic police officer, conservation warden, state forest ranger,
12 field conservation employee of the department of natural resources who is subject to
13 call for forest fire control or warden duty, member of the state traffic patrol, state
14 motor vehicle inspector, University of Wisconsin System full-time police officer,
15 guard or any other employee whose principal duties are supervision and discipline
16 of inmates at a state penal institution, excise tax investigator employed by the
17 department of revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e)
18 (a), or special criminal investigation agent employed by the department of justice.

19SECTION 6. 40.05 (1) (a) 7. of the statutes is created to read:

20 40.05 (1) (a) 7. For a county jailer covered under subd. 3., the percentage of
21 earnings equal to the total actuarially required contribution rate, as approved by the
22 board under s. 40.03 (1) (e), for a participating employee whose formula rate is
23 determined under s. 40.23 (2m) (e) 3., less the contribution rate paid by the employer
24 for a county jailer under sub. (2) (a). This subdivision applies only to a county jailer
25 who becomes a protective occupation participant on or after the effective date of this

1 subdivision [LRB inserts date], and is employed in a county that did not classify
2 county jailers as protective occupation participants on July 1, 2018.

3 SECTION 7. 40.05 (2) (ap) of the statutes is created to read:

4 40.05 (2) (ap) The contributions under par. (a) that are required to be paid by
5 a participating employer for a county jailer whose formula rate is determined under
6 s. 40.23 (2m) (e) 3. shall be a percentage of earnings equal to one-half of the total
7 actuarially required contribution rate, as approved by the board under s. 40.03 (1)
8 (e), for an employee whose formula rate is determined under s. 40.23 (2m) (e) 1. This
9 paragraph applies only to contributions paid for a county jailer who becomes a
10 protective occupation participant on or after the effective date of this paragraph
11 [LRB inserts date], and is employed in a county that did not classify county jailers
12 as protective occupation participants on July 1, 2018.

13 SECTION 8. 40.05 (2) (ar) of the statutes is renumbered 40.05 (2) (ar) 1. and
14 amended to read:

15 40.05 (2) (ar) 1. ~~Participating~~ Except as provided in subd. 2., participating
16 employers of employees subject to s. 40.65 shall contribute an additional percentage
17 or percentages of those employees' earnings based on the experience rates
18 determined to be appropriate by the board with the advice of the actuary.

19 SECTION 9. 40.05 (2) (ar) 2. of the statutes is created to read:

20 40.05 (2) (ar) 2. County jailers who become protective occupation participants
21 on or after the effective date of this subdivision [LRB inserts date], and are
22 employed in a county that did not classify county jailers as protective occupation
23 participants on July 1, 2018, shall make the contribution under subd. 1. in lieu of
24 their employers.

25 SECTION 10. 40.23 (3) (a) of the statutes is amended to read:

140.23 (3) (a) Except as provided in ~~par. pars.~~ (b) and (c), the initial monthly
2amount of any retirement annuity in the normal form shall not be less than the
3money purchase annuity which can be provided by applying the sum of the
4participant's accumulated additional and required contributions, including interest
5credited to the accumulations, plus an amount from the employer accumulation
6reserve equal to the participant's accumulated required contributions, less any
7accumulated contributions to purchase other governmental service under s. 40.25
8(7), 2001 stats., or s. 40.285 (2) (b) to fund the annuity in accordance with the
9actuarial tables in effect on the annuity effective date.

10SECTION 11. 40.23 (3) (c) of the statutes is created to read:

11 40.23 (3) (c) Under par. (a), for a county jailer described in s. 40.02 (48) (am)
1223., the amount to be paid from the employer accumulation reserve is equal to the
13employer required contributions, including interest, paid for a county jailer under
14s. 40.05 (2) (a). This paragraph applies only to a county jailer who becomes a
15protective occupation participant on or after the effective date of this paragraph
16[LRB inserts date], and is employed in a county that did not classify county jailers
17as protective occupation participants on July 1, 2018.

18SECTION 12. 40.65 (4w) of the statutes is created to read:

19 40.65 (4w) A county jailer who becomes a protective occupation participant on
20or after the effective date of this subsection [LRB inserts date], is not entitled to
21a duty disability benefit under this section for an injury or disease occurring before
22the effective date of this subsection [LRB inserts date].

23SECTION 13. 59.52 (8m) of the statutes is created to read:

24 59.52 (8m) EMPLOYMENT OF COUNTY JAILERS. The board shall provide an
25individual who is employed as a county jailer an option to elect not to be a protective

1occupant participant under s. 40.02 (48) (b) at the time the individual is hired as
2a county jailer. An individual shall make an election under this subsection in writing
3on a form provided by the board.

4SECTION 14. 111.70 (4) (bn) of the statutes is created to read:

5 111.70 (4) (bn) *Public safety employee determination regarding county jailers.*
61. Except as provided under subd. 2., **a county jailer**, as defined in s. 40.02 (48) (b)
75., **is a general municipal employee.**

8 2. A county that treats a county jailer as a public safety employee on the
9effective date of this subdivision [LRB inserts date], shall continue to treat any

10person it employs as a county jailer as a public safety employee except that, if the
11county raises a question concerning the appropriateness of including county jailers
12in a collective bargaining unit that includes public safety employees, no person it
13employs as a county jailer may be treated as a public safety employee.

14SECTION 15. Nonstatutory provision.

15 (1) COUNTY JAILER OPT OUT FROM PROTECTIVE OCCUPATION PARTICIPANT STATUS
16UNDER WISCONSIN RETIREMENT SYSTEM. No later than 60 days after the effective date
17of this subsection, if an individual employed as a county jailer on the effective date
18of this subsection does not want to be a protective occupation participant under the
19Wisconsin Retirement System, the individual shall notify his or her employer in
20writing on a form provided by the employer. An election not to be a protective
21occupation participant is irrevocable.

22SECTION 16. Effective date.

23 (1) This act takes effect on the January 1 after publication.

24 (END)

Frequently Asked Questions
July 7, 2016
Appeal: Employment Category Change (Jailers)

The information below pertains to an appeal by a number of employees working in county jails throughout the state (jailers) of Wisconsin. The appeal was based on their employer's determination that they should be reported to the Wisconsin Retirement System as General Category employees instead of protective category employees with Social Security. Of the five representative jailers involved in the appeal, the Department of Employee Trust Funds Board (Board) concluded that all five were properly categorized as General Category employees.

What are the WRS employment categories?

The WRS has four employment categories:

General,
Executive/Elected,
Protective Occupation Participant with Social Security,
Protective Occupation Participant without Social Security (most firefighters).

Who decides the applicable employment category for an individual employee?

Employers are responsible for determining an individual employee's employment category. Generally, an employee may directly appeal an employer's employment category determination to the ETF Board.

What is the appeals process?

ETF offers an administrative appeal process. Employees file an appeal by writing a letter or submitting a completed Appeal Form (ET-4938) to the Appeals Coordinator at ETF. A brochure entitled Employee Trust Funds' Administrative Appeal Process (ET-4943) is available for more information.

Why did some jailers appeal their employer's employment category determination?

Beginning in 2012, certain Wisconsin counties changed the employment category of jailers employed by those counties from Protective to General. As a result, many of those jailers filed an appeal with ETF to challenge that change, based on their belief that they should be reported to the WRS as Protective category employees.

What is the standard an employer must use in determining whether an employee should be reported to the WRS as a Protective category or as a General category employee?

To be reported as a WRS protective, state law requires that an employee's principal duties must involve the following:

Active law enforcement or active fire suppression or prevention;
Frequent exposure to a high degree of danger or peril; and
A high degree of physical conditioning.

The ETF Board has previously interpreted "principal duties" to require that 51% or more of the employee's duties be spent in active law enforcement. "Active law enforcement" includes being actively, currently and directly involved in detecting and preventing crime, and enforcing laws or the ordinances of a participating employer.

Wis. Stat. §40.02(48)(am) lists specific positions typically qualifying as protectives, such as police officers, firefighters and deputy sheriffs. However, bearing one of those titles does not automatically confer protective status. An employer must still evaluate whether at least 51% of an employee's duties meet the three criteria above.

Why did those counties change the WRS employment category of their jailers from Protective to General?

As noted above, it is an employer's responsibility to determine the proper WRS employment category in which to enroll an employee. Based on evidence presented by the county involved in the current administrative appeal, the county did not believe the jailers duties met the definition of protective because 51% of their time was not spent on active law enforcement, their positions did not expose them to a high degree of danger or peril and their positions did not require a high degree of physical conditioning.

What happened after the counties changed their employment category?

Many of the jailers submitted appeals to ETF. Five of those cases were chosen by the parties as representative of the different types of position descriptions and varying duties. The position titles, as provided by their employer, were: (1) Jail Lieutenant, (2) Jail Sergeant, (3) Jailer, (4) Transit Officer and (5) Huber Deputy.

A hearing was held before an administrative law judge from May 18-21, 2015, and May 28-29, 2015. The parties submitted written briefs, the last of which was received on November 7, 2015. The administrative law judge issued a proposed decision, including preliminary findings and conclusions of law, on January 6, 2016. The ETF Board heard the five cases on March 24, and issued a written decision on July 5.

What did the ETF Board decide?

The ETF Board decided that all five jailers involved in the appeal were properly categorized as generals for three reasons:

The evidence did not support the conclusion that the five spent 51% or more of their time engaged in active law enforcement;

They offered no evidence that their work involved frequent exposure to a high degree of danger or peril; and

They did not offer evidence that their work required a high degree of physical conditioning.

The ETF Board further noted that the test for being a protective is a strict one and cannot be met by an employer's decision to have classified the employee as a protective in the past.

A copy of the ETF Board decision may be found here. The names of the parties have been redacted because state law, specifically Wis. Stat. §40.07, prohibits the release of personal information related to WRS members.

Can the five jailers appeal the ETF Board decision?

Yes. The five jailers have 30 days from July 5 (the date the decision was mailed to the parties) to file an appeal in Dane County Circuit Court. A Circuit Court decision would then be subject to further appeal in the Court of Appeals.

While ETF cannot predict how a Circuit Court may view this case, the ETF Board decision cited its long-standing interpretation of Wis. Stat. §40.02(48) in arriving at its conclusion. When a state agency applies a long-standing interpretation of its own statutes to a given case, a circuit court typically gives great weight deference to that interpretation. To the extent that previous ETF Board decisions on this issue have been appealed, the Court of Appeals has affirmed the Board's decisions.

Does the ETF Board decision apply to the other jailers who filed appeal forms but who were not one of the five jailers directly involved in this case?

The five jailers involved in the current appeal were chosen by the parties as being representative of jailers throughout the state because of their varying position descriptions. As a result, the ETF Board decision applies insofar as it provides information on how the Board may evaluate whether a given position meets the requirements to be categorized as a WRS protective. As noted above, in the current five cases, the Board found that the jailers did not present evidence that at least 51% of their time was spent engaged in active law enforcement, that their positions exposed them to a high degree of danger or peril, and that their positions required a high degree of physical conditioning.

Please contact ETF at 1-877-533-5020 or 608-266-3285 (local Madison) with additional questions or concerns.

STATE OF WISCONSIN
EMPLOYEE TRUST FUNDS BOARD

In re appeal of:

[REDACTED], [REDACTED],
[REDACTED], [REDACTED] and
[REDACTED]

NOTICE OF FINAL DECISION

Appeal Nos. 2013-007-ETF, 2013-043-ETF,
2013-049-ETF, 2013-050-ETF and
2013-054-ETF

TO:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

On this date, on behalf of the Employee Trust Funds Board, I am hereby mailing to each of the above-named parties an attached copy of the final decision of the Board in the above captioned matter. Please see the notice of rights below.

Dated and mailed this 5th day of July, 2016.

FOR THE BOARD:

By: Kim C. Esselman
Kim C. Esselman
Appeals Coordinator

NOTICE OF RIGHT TO PETITION FOR REHEARING
AND TO PETITION FOR JUDICIAL REVIEW

A party has the right to petition the Board for a rehearing pursuant to s. ETF 11.14, Wis. Adm. Code. A written petition for rehearing, naming the Board as respondent, may be made within 20 days of the date of this notice. A rehearing may only be granted on the basis of material error of fact or law, or the discovery of new evidence which could not have been previously discovered by due diligence and is sufficiently strong to reverse or modify the Board's decision. A rehearing petition must describe the particular alleged errors or the new evidence which is the basis for the request and cite any supporting legal authorities.

Judicial review of the Board's final decision is by an action for certiorari in the Dane County Circuit Court commenced within 30 days of the date of this notice, or the notice of the Board's decision on a petition for rehearing, as provided in s. 40.08(12), Wis. Stats. The Board must be named as the respondent or defendant. The above-named addressees, to whom this notice is sent, are the parties to the underlying proceedings.

STATE OF WISCONSIN
EMPLOYEE TRUST FUNDS BOARD

In the Matter of the Appeals of

Appeal Nos.

██████████

2013-007-ETF

██████████

2013-043-ETF

██████████

2013-049-ETF

██████████

2013-050-ETF

██████████

2013-054-ETF

FINAL DECISION AND ORDER

1. On March 22, 2013, the Department of Employee Trust Funds received an appeal on behalf of ██████████, ██████████, ██████████, ██████████, and ██████████.

2. By letter dated March 7, 2014, the appeals were referred to the Division of Hearings and Appeals for hearing, as provided by Wis. Admin. Code §§ ETF 11.01 and 11.04(1). The Division's authority to serve as the Board's hearing examiner is conferred by Wis. Stat. § 227.43(1m).

3. A hearing was held May 18–21 and 28–29, 2015, Jeffrey D. Boldt, administrative law judge, presiding. The parties submitted written briefs, and the last filing was received on November 7, 2015.

4. The issue to be decided is whether the appellants should be classified as protective occupation participants under Wis. Stat. § 40.02(48)(a) since December 23, 2012, when their employer began treating them as general occupation employees.

FINDINGS OF FACT

5. This case involves the appeals of five individuals who work for ██████████ County in the ██████████ County Jail. The parties agreed to proceed with the case through a combined hearing. All have been employed by the County for all times relevant to these proceedings. ██████████ is employed as a Jail Lieutenant, ██████████ as a Jail Sergeant, ██████████ as a

Jailer, [REDACTED] as a Transport Deputy, and [REDACTED] as a Huber/Electronic Monitoring Deputy.

6. Each of the appellants has, for most of the tenure of his employment with the County, been continuously reported by the County to the Department of Employee Trust Funds (Department) as a protective occupation employee.

7. Every employee who has held the positions of [REDACTED] County Jail Lieutenant, Jail Sergeant, Jailer, Transport Deputy, and Huber/Electronic Monitoring Deputy has been continuously categorized as a protective occupation participant since sometime in the late 1980s.

8. On or about December 12, 2012, the County notified the appellants that it was changing their employment classification for Wisconsin Retirement System (WRS) purposes from protective occupation to general employee, effective December 23, 2012.

9. Employees have a right of direct appeal to the Board regarding an employer's classification of their employment status. The appellants each sought review of [REDACTED] County's decision to reclassify them. (R. 8393-8415.)

[REDACTED]

10. [REDACTED] testified that he has been employed as the jail lieutenant in [REDACTED] County for sixteen years and is second in command in the jail operation. He is part of the command staff and is one of two supervisors in the jail.

11. [REDACTED] job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. In a survey, he described the major purpose and objectives of his job: "To ensure the safe and effective management of all jail operations. To comply with all State and Federal guidelines while protecting the Public and the rights of the inmate population." [REDACTED] listed his "operational responsibilities" in the jail to include supervising the jail division, reviewing jail staff documents, enforcing inmate policies and procedures, preparing jail division payroll, developing and maintaining the jail division schedule, and completing annual performance evaluations.

12. [REDACTED] testimony confirmed the supervisory nature of his position. [REDACTED] testified that his supervisory responsibilities include overseeing the work of the jail staff and conducting evaluations of the staff. He testified about his "typical day."

Q. Can you walk us through a typical day, tell us what your typical duties would be, what you do during the day, try to list all the various duties that might be included within a typical day.

A. Well, it can vary from day to day. But typical would be to check with booking, see who came in during the night. Why they're being held. Check with medical. See if there's any inmates with current health issues that need to be addressed. Review reports. Go over scheduling. Check with the staff. I help out with court escorts, if staff is not available to do that. Meet with the captain over new policies. Talk about procedural changes. Attend meetings for different projects we have going on.

(R. 1088-89.)

13. [REDACTED] testified that he also "occasionally" performs jailer duties such as filling in shifts as a jailer, conducting rounds, and distributing meals.

14. [REDACTED] explained how an investigation would be conducted if contraband were discovered in the jail and how charges would be forwarded to the District Attorney if the case had merit. He testified it is "very seldom" that he is involved in any actual arrests or referrals of charges to the District Attorney.

15. [REDACTED] admitted that his job description provides an accurate description of his job duties, with the limited exception of those duties that have been transferred to others. [REDACTED] offered no testimony about the percentage of time he spends on any one activity.

16. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril or that it requires a high degree of physical conditioning.

██████████

17. ██████████ is a supervisor on the second shift. He testified that he is responsible for overseeing the work of the jail staff and ensuring that it is done properly.

18. ██████████ job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. ██████████ acknowledged that he performs the duties described in his job description, which include supervision and direction of the workforce, preparing shift schedules, ensuring adherence to procedures and schedules for meals, laundry and cleaning, ensuring that rounds are completed, inspections of staff, equipment and documentation of activities, performance evaluation of employees, and training of employees. He testified that his job description and the post order about the jail sergeant position reflect his job responsibilities.

19. ██████████ testified about occasional activities that are more similar to what police officers do, such as investigating potential criminal misconduct in the jail, investigating fights that have occurred in the jail, and requesting arrest warrants for escapees. ██████████ testified that he responded to one incident in which the circuit court judge purportedly called the jail for assistance in dealing with a disruptive person; he could remember only one such incident. ██████████ testified that he was involved in a drug bust in the church in the jail "quite a while ago." ██████████ testified to another incident in which an out-of-control inmate damaged a cell. ██████████ provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

20. ██████████ provided no evidence that his job involves frequent exposure to a high degree of danger or peril or that it requires a high degree of physical conditioning.

██████████

21. ██████████ has been employed as a jailer with ██████████ County for sixteen years. His job duties generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. ██████████ testified that his job description, marked as Exhibit 45, lists the essential duties and responsibilities of his position. That description describes booking inmates, making rounds, maintaining discipline, conducting surveillance of inmates, monitoring and operating jail equipment, controlling

access to the jail, interpreting bond conditions and commitment orders, maintaining communication between shifts with other jail staff, completing required paperwork, providing for medical attention needed by the inmates, assisting with the food service program, delivering food and linens, handling visitors, maintaining Huber inmate compliance, and transporting inmates.

22. [REDACTED] testified about occasional work that is more similar to what a police officer does. [REDACTED] testified that he was a member of the SWAT team for 13 years, but jailers are no longer allowed to participate on SWAT. He was the commander of the Correctional Emergency Response Team, and recalled a riot in the jail 11 years ago, but it has not been called out for the past five years. [REDACTED] testified to investigating some crimes in the jail at times during his sixteen-year career, including theft, obstructing, resisting, disorderly conduct, battery to an inmate, and battery to law enforcement. [REDACTED] testified that he occasionally listens to inmate phone calls. [REDACTED] provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

23. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril and requires a high degree of physical conditioning.

[REDACTED]

24. [REDACTED] has been employed as [REDACTED] County's transit officer for 15 years. On occasion, he fills in and does the duties of a jailer.

25. [REDACTED] duties transporting inmates generally do not entail currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. As set out in the post order for his position, [REDACTED] duties and responsibilities include coordinating all incoming orders of the court for transportation of all inmates, patients and others for scheduled court appearances; transporting inmates; processing all extraditions to and from [REDACTED] County, including processing all paperwork associated with the extradition; conducting fleet inspections to make sure all cars are serviced and equipped to department standards; and assisting the Huber officer with Huber checks and tasks.

26. [REDACTED] described the principal duties of his position:

Q Right. And your job is to take, as at least in the case of an inmate, to take someone who's in custody, and maintain them in custody in a motor vehicle from point A to point B, whatever point [B] may be?

A. My job is to bring the prisoner from point A to point B.

(R. 1066.) [REDACTED] also performs jailer duties when needed and does court escort work, including using an electronic shock device.

27. [REDACTED] testified that his job may require him to engage in activities that are similar to those performed by a police officer. If there is an escape or the transportee commits a crime or rule violation, [REDACTED] conducts an investigation. He testified that if an arrest is warranted, he executes the arrest. [REDACTED] provided no evidence about the percentage of time he spends on activities such as these, and the evidence does not support a conclusion that he spends 51 percent or more of his time so engaged.

28. [REDACTED] provided no evidence that his job involves frequent exposure to a high degree of danger or peril. While the transport environment is less controlled than the jail, his testimony did not support a finding that he is frequently exposed to a high degree of danger. He offered no testimony that his position requires a high degree of physical conditioning.

[REDACTED]

29. [REDACTED] has been employed as the Huber Deputy in [REDACTED] County since 2001. [REDACTED] supervises inmates who are granted Huber work release privileges, as well as inmates placed on electronic monitoring.

30. [REDACTED] duties running the Huber program generally do not involve currently, actively, or directly detecting or preventing crime and enforcing laws and ordinances. As described in the relevant post order (Jt. Exh. 9:41), [REDACTED] duties and responsibilities include managing the Huber and electronic monitoring program; coordinating and conducting transport and court scheduling in the absence of the transport officer; adhering to all written Huber ordinances, policies and procedures; maintaining a weekly Huber roster; periodically checking on Huber inmates in the field; answering voicemail and return phone calls; investigating Huber and electronic monitoring client complaints and violations; conducting discipline hearings for Huber violations; reviewing requests for child care; reviewing Huber transfers; approving Huber deviations; reviewing requests for electronic monitoring; making home visits

on electronic monitoring clients as needed; and maintaining electronic monitoring equipment.

31. Although he enjoys more autonomy in the field than the jailers in the jail, █████ offered no testimony regarding the percentage of time he spends on any one activity. The evidence does not support a finding that he spends 51 percent or more of his time actively detecting or preventing crimes committed by these inmates.

32. █████ provided no evidence that his job involves frequent exposure to a high degree of danger or peril and that it requires a high degree of physical conditioning. The offenders qualifying for Huber are the least dangerous offenders. █████ only altercations with offenders occurred in the jail, not with offenders on release. As to the physical demands of the job, █████ did not say that a high degree of physical conditioning was required; instead, he indicated that "you just have to be in – I would say in shape or conditioned." (R. 1200.)

CONCLUSIONS OF LAW

33. The appellants seek classification as protective occupation participants. Wisconsin Stat. § 40.02(48)(a) defines "protective occupation participant:"

[A]ny participant whose principal duties are determined by the participating employer, or, subject to s. 40.06(1)(dm), by the department head in the case of a state employee, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

The Board has interpreted "principal duties" to require that 51 percent or more of the employee's duties to be spent in active law enforcement. *See Mattila v. Emp. Trust Funds Bd.*, 2001 WI App 79, ¶¶ 14 n.3 & 15, 243 Wis. 2d 90, 626 N.W.2d 33. The Board has defined "active law enforcement" to include being "actively, currently and directly involved in detecting and preventing crime and enforcing laws or the ordinances of a participating employer." *Mattila*, 243 Wis. 2d 90, ¶ 14 n.3.

34. Because protective occupation participants can retire at age 50 and enjoy other significant employment benefits over general occupation employees, the test is a strict one. The Wisconsin court of appeals recognized that the designation is limited to a "narrow class" of employees who meet

"stringent standards." *Cty. of La Crosse v. WERC*, 170 Wis. 2d 155, 167, 488 N.W.2d 94 (Ct. App. 1992), *rev'd on other grounds*, 180 Wis. 2d 100, 508 N.W.2d 9 (1993).

35. An employee cannot qualify for protective occupation status simply through his employer's decision to so classify him in the past. The employee's job duties must meet the statutory definition of active law enforcement. *Mattila*, 243 Wis. 2d 90, ¶¶ 14-15. Just as an employee cannot definitively qualify as a protective occupation participant by having his employer deputize him, he also cannot definitively achieve that status by reaching an agreement with his employer to so report him.

36. The question of whether jailers meet the three-part requirements of Wis. Stat. § 40.02(48)(a) has been litigated on a number of occasions, including in *Mattila*. As the record reflects (R. 243-479), this Board has consistently held over a number of decades that jailers do not meet the definition of protective occupation participants. The Board has concluded that 51 percent of their duties do not consist of active law enforcement.

37. To the extent these cases were appealed, the court of appeals has affirmed the Board's decisions. The court of appeals decision in *Mattila* does not squarely address the issue because the jailers in that case decided to rely on their status as deputy sheriffs, not their actual job duties. *Mattila*, 243 Wis. 2d 90, ¶¶ 14-15 & n.3. The court of appeals did reach the question of whether jailers with duties similar to those of [REDACTED], [REDACTED], and [REDACTED] in *Hoermann v. Employee Trust Funds Board*, 216 Wis. 2d 112, 573 N.W.2d 899 (Ct. App. 1997), in an unpublished opinion. It concluded that the jailers' principal duties did not constitute active law enforcement because they did not devote at least 51 percent of their time to active law enforcement.

38. Further, the appellants must satisfy the second and third parts of the test. If an employee meets the principal duties test, he still must show that his job entails frequent exposure to a high degree of danger and peril and requires a high degree of physical conditioning. Wis. Stat. § 40.02(48)(a). This is a fact-specific inquiry. In prior appeals by jailers, the Board has reached varying conclusions, depending on the facts presented, about whether the jobs met these tests. *Compare* R. 477-47 and 292 (concluding jailers did not meet those requirements) *with* 274 (concluding that they did).

39. [REDACTED], [REDACTED], and [REDACTED] are jailers or jailer supervisors for [REDACTED] County. They make out no case that their duties are meaningfully different from those of the earlier jailer appellants.

40. Like the appellants in the consolidated 2015 appeals of local airport workers, 14-ETF-008 -011, the appellants contend that it is the qualitative importance of their duties, not the quantity of time, that matters. (R. 81; 113; 116.) As this Board has previously concluded, this reading does not square with *Mattila*. The "principal duties" test is based on the way an employee spends his or her time, not the qualitative importance of a particular duty.

41. The appellants also suggest that crime detection and prevention is built into everything they do. [REDACTED] for example, testified that custodial duties such as delivering laundry, medication, and food provide an opportunity to see whether inmates are engaged in any illegal activity—so that, in a general way, that task is "law enforcement." The appellants' premise reads the statutory definition too broadly. To be principally engaged in "active law enforcement," the employee must primarily be engaged in actively detecting or preventing crime. Delivering laundry, food and medication may provide an opportunity to enforce the law at times, but that is not the primary purpose of the role, and it is not active law enforcement. There are many professions, such as the district attorney investigator position at issue in the *Triolo* appeal, that involve enforcing the law in a broader sense. But it is only a narrow band of active law enforcement positions that qualify for classification as protective occupation participants.

42. Even if the appellants could meet the 51 percent requirement, they do not satisfy two other requirements of the definition.

43. First, the appellants' duties do not expose them to "frequent" exposure to a high degree of danger or peril. The appellants provide evidence that sometimes they are exposed to danger, and testified to episodic moments of danger. But that does not mean their exposure is "frequent" and of a "high degree."

44. Second, the appellants concede that the position description requires no physical conditioning, much less a "high degree" of physical conditioning.

45. In theory, a jailer could present a case that the duties of his position are significantly different from those of the jailer appellants in the Board's past cases. But [REDACTED], [REDACTED], and [REDACTED] do not do this. For this Board to find that [REDACTED], [REDACTED], and [REDACTED] are protective occupation participants, it would have to abandon the position it has taken regarding

jailers for the last twenty years and essentially ignore its own definition, accepted in *Mattila*, of active law enforcement.

46. [REDACTED], [REDACTED], and [REDACTED] failed to demonstrate that they meet the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

47. [REDACTED] says his job is different from that of other jailers because he spends most of his time transporting prisoners from place to place, including doctor appointments, other jail facilities, and hospitals. [REDACTED] does not persuasively explain how the daily work of transporting prisoners is "active law enforcement" within the meaning of the Board's definition. [REDACTED] duties are primarily custodial, ensuring the safe transport of inmates and others in the community. [REDACTED] failed to show that 51 percent or more of his time is spent in active law enforcement.

48. Further, like [REDACTED], [REDACTED], and [REDACTED], [REDACTED] also fails to meet either the exposure to danger or high degree of physical conditioning requirement. [REDACTED] job may be somewhat more dangerous than the jailers' because he is on the road with offenders rather than just the controlled environment of the jail. But he did not testify to being frequently exposed to a high degree of danger or peril. He testified to no requirement of a high degree of physical conditioning.

49. The hearing examiner's proposed decision would find that [REDACTED] meets the requirements for a protective occupation participant because [REDACTED] carries a weapon and wears a uniform like a police officer; is responsible for making sure that individuals do not escape; and operates "independently in the field." Those factors do not correlate with the definition of active law enforcement. Ensuring that inmates do not escape is a core duty shared by all jailers, who, as discussed above, have never been treated as engaged in active law enforcement. The independence of an employee is not what defines him or her as engaging in active law enforcement. And whether [REDACTED] uniform looks like those worn by police officers is irrelevant to whether he engages in particular types of duties. The hearing examiner also did not analyze the danger or physical conditioning requirements as applied to [REDACTED] position.

50. The retracted expert opinion of McRoberts relied on by the hearing examiner suffers from the same deficiencies: it relies on irrelevant criteria, like the employee's independence; makes no analysis of the dangerousness and

physical conditioning aspects of the job; and fails to assess how much of the employee's day is spent on active law enforcement.

51. [REDACTED] failed to demonstrate that he meets the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

52. [REDACTED] the Huber officer for the County, argues that his job is also meaningfully distinct from other jailers. While [REDACTED] spends some time investigating offenders' activities and monitoring them using GPS and alcohol-monitoring devices, [REDACTED] also failed to show that 51 percent or more of his time is spent engaged in active law enforcement. In the course of running the Huber program, [REDACTED] responsibilities are primarily administrative and supervisory, overseeing Huber inmates' needs while on work release and ensuring their compliance with the program's requirements.

53. Further, [REDACTED] fails to meet either the exposure to danger or high degree of physical conditioning requirement. [REDACTED] did not testify that he is "frequently" exposed to a "high degree of danger or peril." As the County pointed out, the offenders qualifying for Huber are the least dangerous offenders. [REDACTED] only altercations with offenders occurred in the jail, not with offenders on release. As to the physical demands of the job, [REDACTED] did not say that a high degree of physical conditioning was required.

54. In concluding that [REDACTED] met the requirements to be a protective occupation participant, the hearing examiner considered that [REDACTED] works independently in the field; as discussed above, that is not part of determining whether he is engaged in active law enforcement. The hearing examiner also noted that [REDACTED] may occasionally be called upon to assist police officers with an arrest, but such occasional duties cannot meet the 51 percent test; the County also asserts that even this assistance would occur while he is off duty. The hearing examiner did not analyze whether [REDACTED] spent 51 percent or more of his time engaged in duties that constitute active law enforcement. The hearing examiner also did not analyze whether [REDACTED] satisfies the frequent exposure to a high degree of danger and the physical conditioning requirement prongs of the test.

55. [REDACTED] failed to demonstrate that he meets the definition of a protective occupation participant under Wis. Stat. § 40.02(48)(a).

VARIATIONS FROM HEARING EXAMINER'S PROPOSED FINAL DECISION

1. The final decision discusses facts relevant to the danger/peril and physical conditioning requirements more thoroughly. Unsupported or irrelevant facts have been deleted.

2. The final decision addresses the appellants' argument that it the qualitative importance of the employee's duties, not the quantity of time, that determines whether he meets the principal duties test. The final decision also addresses their argument that daily jailer duties, such as making rounds, are active law enforcement because they may provide opportunities to detect or prevent crime and enforce the law.

3. The final decision addresses the appellants' argument that they are entitled to continue to be classified as protective participants because that is how the County classified them originally.

4. The final decision deletes conclusions that it was reasonable for the County to have classified the jailers differently in the past. That is irrelevant to the conclusions in these appeals. In theory, it is possible that a jailer would have significantly different duties than the jailers in past appeals, requiring a different outcome. But these jailers did not present such a case.

5. The final decision discusses the governing statute and case law more thoroughly.

6. The final decision concludes that [REDACTED] and [REDACTED] do not meet the definition of a protective occupation participant.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the reclassification by [REDACTED] County as to all five appellants is AFFIRMED.

Dated as of the 24th of March, 2016.

EMPLOYEE TRUST FUNDS BOARD:

Wayne Koessl
Wayne Koessl, Chair

PARTIES FOR PURPOSES OF JUDICIAL REVIEW

Pursuant to Wis. Admin. Code §§ ETF 11.03(7) and 11.12(1)(c), the following persons or entities participated in and are certified as PARTIES to this appeal:

[REDACTED]

by

Attorney [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] County, by

Attorney [REDACTED]
[REDACTED]
[REDACTED]